

In the Matter of License No. R-7946 Merchant Mariner's Document No.
Z-935055 and all other Seaman Documents
Issued to: JOHN R. SEEGER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1448

JOHN R. SEEGER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 12 October 1962, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents for nine months outright plus three months on eighteen months' probation upon finding him guilty of misconduct. The allegations in the six specifications were proved by evidence that while serving as the only radio operator on board the United States SS GREEN HARBOUR under authority of the license above described, Appellant wrongfully failed to perform his duties at sea on five consecutive days from 29 May through 3 June 1962; and Appellant wrongfully took the personal property (a bottle of gin) of another crew member on 3 June 1962.

At the hearing, Appellant was not present or represented by counsel. Consequently, the Examiner entered pleas of not guilty in behalf of Appellant and the hearing was conducted in absentia. Appellant had been notified that the hearing would start on 18 June 1962 and a letter was sent to him each time there was a continuance to await the availability of the two government witnesses. They appeared on 27 September 1962 and testified after the hearing had been continued five times.

At the end of the hearing, the Examiner rendered a written decision dated 12 October 1962 but it was not served on Appellant until 18 November 1963.

The only contention on appeal is that Appellant was denied due process by the suspension of his documents since there is no evidence that Appellant received the letters sent to notify him of the dates set for the hearing subsequent to 18 June 1962. Hence, Appellant requests a new hearing or a modification of the excessive order of suspension.

APPEARANCE ON APPEAL: Smith and Waltzer of New Orleans,

Louisiana by Bruce C. Waltzer, Esquire,
of Counsel.

OPINION

The record shows Appellant was properly notified on 8 June that the hearing would commence on 18 June and would proceeding his absence if he did not appear. Whether Appellant received the letters sent to notify him of subsequent continuances is immaterial since he would have had this information if he had been present at the beginning of the hearing on 18 June and later dates set for the hearing. Nevertheless, efforts were made to inform Appellant of these circumstances. On the other hand, there is nothing in the record which indicates that Appellant contacted Coast Guard personnel at any time prior to the date of the decision although by then he had been on notice for more than four months that action against his seaman documents was pending. Under these circumstances, there is no denial of due process of law.

Concerning the length of the suspension ordered, it is my opinion that the Examiner was lenient in view of the evidence that Appellant was continually intoxicated during the five days at sea covered by the specifications. If an emergency situation had developed which required the expeditious sending of a radio message, it is very unlikely that Appellant could have performed this duty and he was the only seaman serving as a radio operator on the ship.

ORDER

The order of the Examiner dated at New York, New York, on 12 October 1962, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 28th day of February 1964.